

Attorney General

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Phoenix, Arizona 85007

Robert R. Corbin

September 29, 1986

The Honorable John Hays
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: 186-097 (R86-108)

Dear Senator Hays:

You have indicated that the Arizona Beef Council ("Council") intends to participate in the federal government beef promotion program authorized by Congress, and to collect money on its behalf from Arizona beef producers. You have described the following procedure which the Council intends to implement to collect its assessments.

The monies initially would be collected by Arizona Livestock Board brand inspectors pursuant to A.R.S. § 24-166. If any producers then request refunds pursuant to A.R.S. § 24-168, the Council would pay the refunds, but then would proceed to recollect these monies from these producers pursuant to the federal law. You have indicated that this procedure is necessary in order to comply with the delayed-refund requirements of the federal program.

You have asked whether the above procedure would be permissible under Arizona law. In our opinion, the proposed procedure meets the requirements of state law and is within the statutory powers of the Council.

The Beef Promotion and Research Act of 1985 ("Act"), 7 U.S.C.A. §§ 2901-2911, authorizes the creation of a Cattlemen's Beef Promotion and Research Board ("Board") by the Secretary of Agriculture for the purpose of strengthening the beef industry's position in the market place through promotion

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and research. The Board's operations are to be financed by an assessment of one dollar per head of cattle collected from all beef producers or beef importers in the country. The assessment is to be collected by the Board or by "qualified State beef councils." 7 U.S.C.A. § 2904(8)(A)-(8)(B). If the assessment is collected by a qualified State beef council, up to fifty cents of each dollar of the assessment collected shall be credited to the paying producer or importer as a contribution to the State council. 7 U.S.C.A. § 2904(8)(C).

The Act provides for implementation of the beef promotion and research program through the issuance of an order by the Secretary of Agriculture, after a period of public comment. 7 U.S.C.A. § 2903. This order was issued July 18, 1986. 51 Fed. Reg. 26132. The order shall continue in effect only if approved by a majority of beef producers in a referendum no more than 22 months after the issuance of the order. 7 U.S.C.A. § 2906.

The Act provides for a one-time refund of all assessments collected from any producer or importer demanding it. 7 U.S.C.A. § 2907. The order implementing the Act provides for payment of requested refunds within 90 days after the results of the referendum on the order are released. 51 Fed. Reg. 26132, 26144 (1986). Qualified State beef councils are required by the federal order to certify to the Board that all requests from producers for refunds from the council will be honored by forwarding to the federal board that portion of such refunds equal to the amount of credit received by the producer for contributions to the State council. 51 Fed. Reg. 26132, 26145 (1986).

In our opinion, the Arizona Beef Council has the authority under state law to act as a collection agent for the Board. The Arizona Beef Council's powers and duties are set forth in A.R.S. § 24-163. A.R.S. § 24-163(B) provides, in pertinent part, that the Council may:

9. Cooperate with any local, state or nationwide organization or agency engaged in work or activities similar to or related to those of the council, and enter into contracts with such organizations or agencies for carrying on joint programs.

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10. Act jointly and in cooperation with the state or federal government, or both, or any agency thereof in the administration of any program of the government or of a governmental agency deemed by the council as beneficial to the beef industry of this state, and expend funds in connection therewith.

The above provides statutory authority for the Council to cooperate with the Cattlemen's Beef Promotion and Research Board, and to act as its agent in the collection of the federal assessment and in processing refunds pursuant to the federal Act and order. Under these provisions, the Council also has the authority to pass on to the federal program monies collected by Arizona Livestock Board inspectors under A.R.S. § 24-166, because of its power to expend monies in cooperation with federal programs.

Under the order establishing the federal program, the Council would also have the authority, if selected as a qualified State beef council, to directly collect the federal assessment from purchasers or producers of cattle. 51 Fed. Reg. 26132, 26143-44 (1986). Since this authority would be based on federal law, it would be in addition to the Council's power to collect up to one dollar per head from each producer pursuant to A.R.S. § 24-166. Thus, if it is selected as a qualified State beef council under the federal program, the Council could legally collect up to two dollars per head from each Arizona producer--one dollar through the Arizona Livestock Board brand inspectors pursuant to A.R.S. § 24-166, and one dollar under the federal law.

Since the Council plans to collect each dollar for the federal program by initially using Arizona Livestock Board brand inspectors, all monies thereby collected are subject to the provisions of A.R.S. § 24-168, which requires a prompt refund upon request of any monies collected under A.R.S. § 24-166. The Act establishing the federal program specifically provides that it does not preempt any such state law. 7 U.S.C.A. § 2910.

However, since it would have the additional power to collect a dollar under the federal law, the Council could legally, in our opinion, pay any refunds requested under A.R.S. § 24-168, and then recollect any refunded monies pursuant to

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the federal law. Monies thus collected would then be subject to the federal refund provisions described above.

If it is selected as a qualified State beef council under federal law, the Council will have the authority to participate in the federal promotion program as you have described, and may legally do so under state law.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bob Corbin", written in a cursive style.

BOB CORBIN
Attorney General

BC:JTS:jaf